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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,346	12/11/2001	Jean-Paul Michaut	P21328	8305

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,346

Applicant(s)

MICHAUT, JEAN-PAUL

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-19, 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Antoine FR 2768162.

Antoine discloses a draining bituminous road comprising a plurality of layers (4, 5)

Wherein a 1st, upper layer (4) can have a thickness of 1.5 cm and further comprises: A bituminous binder, modified by a elastomer; aggregate diameter in the range of 0/6-4/6 mm; a plurality of filler materials having a total weight% in the range from 7-10%. The 2nd lower layer (5) can have a thickness in the range of 4-6 cm and further comprises a bituminous binder and aggregate having a diameter in the range of 10/14 mm. Such that the 1st aggregate size distribution is from about 2.5:1-4:1. See Page 5, Ins. 10-34.

In regards to Claims 13, 15 Antoine discloses the particle size distribution of the 1st layer is at least 94% of the 4/6 mm range, and the 2nd layer has a distribution of at least 94% of the 10/14 mm range.

In regards to Claims 16-19 Antoine discloses the void ratio of the upper and lower layers are in the range of 20-30%, and the upper layer preferably has a smaller void ratio than the lower layer. See Abstract; page 1, Ins. 5-12; page 2, ln. 25-page 3, ln. 5.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antoine
Fr 2768162 in view of Langumier et al. # 5,256,712.

Antoine discloses an elastomer modified bituminous binder but does not disclose the specific components of the elastomer. However, Langumier et al. discloses a road quality bitumen comprising: a bituminous binder; at least 3% elastomer, such as (SBS) and at least 30% bitumen containing less than 6% of saturated products and less than 7% of asphaltenes. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to provide the water permeable roadway of Antoine with a bituminous composition, as taught by Langumier et al. in order to maximize the storage ability of the elastomeric bitumen composition. See Langumier et al. col. 2, line 45-col. 3, line 60.

3. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Antoine FR 2768162 in view of Ulrich et al. # 5,735,634.

Antoine discloses a process for providing a road surface with a draining bituminous blanket comprising at least 2 layers. Said 1st layer comprising a modified bituminous binder, aggregate having a 1st particle size and between 7-10%% of an filler material. Said 2nd layer comprising a bituminous binder and an aggregate having a particle size distribution larger than the 1st layer. What Antoine does not disclose is how the roadway is formed. However, Ulrich et al. discloses a road finisher comprising a plurality of premix hoppers 5, 6 for receiving an different types of asphaltic concrete; a plurality of conveyors (8, 9) for separately providing different types of asphaltic concrete to a roadway to be paved, such that one type of asphaltic concrete forms a 1st layer and the other of said asphaltic concretes forms a 2nd layer on top of said 1st layer.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to provide the process of making a water permeable roadway of Kim et al. with a road finisher capable of spreading 2 layers of paving material onto a roadway, at taught by Ulrich et al., in order to pave a multi-layer roadway in 1 pass.

4. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Antoine FR 2768162 as applied to claim 28 above, and further in view of Hendriks et al. # 5,910,212.

Antoine discloses essentially all that is claimed, except for the temperature at which the paving materials are applied to the roadway. However, Hendriks et al. teaches an open graded asphalt that is applied to a roadway at a temperature less than 140 degrees Celsius. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to form the roadway of Antoine in view of Ulrich et al. at a temperature less than 140 degrees Celsius, as taught by Hendricks et al., in order to reduce toxic emissions and the cost of maintaining the paving material temperature.

Response to Arguments

5. Applicant's arguments with respect to claims 10-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (703) 305-0135. The examiner can normally be reached on Monday-Friday from 8:00 am to 2:00 pm, 6-8 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703) 305-8623.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

RWA
5/2/2003